

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made by and between Javier Gonzales-Guerrero ("Plaintiff") and the City of San José, Brian Johst, Mark Stephens, Gary Petrakovitz, and Tim Stephens ("Defendants"), collectively referred to as the "Parties."

WHEREAS, Plaintiff filed an action against the Defendants on or about July 6, 2012, in the United States District Court, Northern District of California, San Jose Division, case number CV12-03541 PSG, entitled Javier Gonzales-Guerrero v. City of San José, et al. ("Action");

AND WHEREAS, the Parties now undertake to settle this Action in its entirety, and Plaintiff and Defendants now undertake to release and extinguish on a final basis any and all claims against the Defendants, arising out of, or in any way connected with, the incident which is the subject of the Action, which occurred on or about October 23, 2011, in San Jose, California, as more fully described in the Complaint filed in this Action ("Incident");

AND WHEREAS Plaintiff desires to dismiss the Action with prejudice;

NOW THEREFORE, the Parties agree as follows:

1. For consideration of Four Million Nine Hundred and Fifty Thousand dollars (\$4,950,000), Plaintiff on behalf of himself, his past and present assigns, heirs, executors, and administrators, does hereby release and forever discharge the Defendants, their past and present employees, partners, agents, predecessors, successors, consultants, attorneys, and assigns, all of whom

expressly deny any liability, from any and all claims, demands, damages, actions, or suits, known and unknown, relating to, arising out of, or in any way connected with the Incident. A draft in the amount of Four Million Nine Hundred and Fifty Thousand dollars (\$4,950,000) shall be made payable to: "Javier Gonzales-Guerrero and his Attorneys J. Joseph Wall, Jr. and Kenneth W. Robinson" and shall be delivered to counsel for Plaintiff within 35 days of receipt of the Fully Executed Settlement Agreement and Release as authorized by the City Council. In consideration for the above-referenced payment, Plaintiff shall dismiss the Action with prejudice within ten days after service of the drafts.

2. The Parties shall cooperate in executing all documents necessary to effectuate this Settlement Agreement and to effectuate the dismissal with prejudice of the Action.

3. Section 1542 of the Civil Code of the State of California provides as follows:

"A General Release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the Release, which if known by him or her must have materially affected his or her settlement with the debtor."

Plaintiff represents that Civil Code Section 1542 has been read and reviewed with counsel and understood, and that he hereby waives any and all present and future rights and benefits under Section 1542 to the extent it would permit claims relating to, arising out of, or any way connected to the Incident based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

4. The Parties understand and acknowledge that this Settlement Agreement constitutes a compromise and settlement of disputed claims relating to, arising out of or any way connected with the Incident. No act taken by the Parties, either previously or in connection with this Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims heretofore made or an acknowledgment or admission by any party of any fault or liability whatsoever to the other party.

5. The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with this Settlement Agreement and the events underlying this Settlement Agreement.

6. The Parties represent that they have had the opportunity to consult with legal counsel and have carefully read and understand the terms of this Settlement Agreement. The terms of this Settlement Agreement are voluntarily accepted for the express purpose of making a full and final compromise and settlement of the Action.

7. This Settlement Agreement represents the entire agreement and understanding between the Parties regarding settlement of the Action and supersedes any and all prior and contemporaneous agreements, representations, and negotiations. This Settlement Agreement may be modified or amended only by a written instrument signed by all Parties hereto.

8. Each person executing this Settlement Agreement on behalf of any other person or persons hereby warrants that they have full authority to do so.

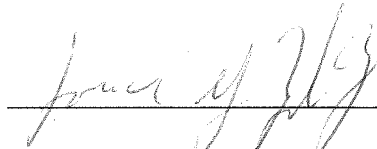
9. Plaintiff and his attorneys agree to indemnify and hold harmless the City of San Jose with regard to any liens or claims for past or future medical treatment and/or other expenses Plaintiff may have incurred, or will incur, as a result of the Incident. Plaintiff and Plaintiff's attorneys represent that if a Medicare Set-Aside Trust is required that they will establish and fund said Trust and hold the City of San Jose and its attorneys harmless from and indemnify them from any claims by Medicare relating to or concerning such Trust.

10. This Settlement Agreement shall become effective upon approval by the San Jose City Council in open session.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date last set forth below.

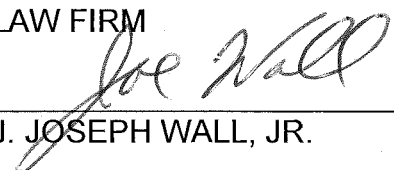
Dated: 8-30-2013

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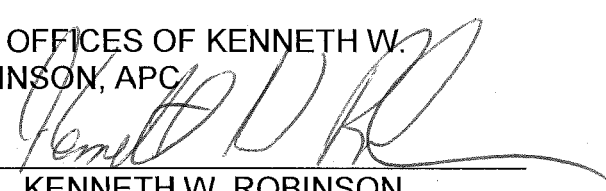
JAVIER GONZALES-
GUERRERO
Plaintiff

Dated: 8/30/2013

WALL LAW FIRM
By: 

J. JOSEPH WALL, JR.
Attorney for Plaintiff

Dated: 8/30/2013

LAW OFFICES OF KENNETH W.
ROBINSON, APC
By: 

KENNETH W. ROBINSON
Attorney for Plaintiff

CITY OF SAN JOSE

Dated: _____

By: _____

NORA FRIMANN
Assistant City Attorney as
Authorized Agent for the
CITY OF SAN JOSE

Dated: 8/30/13

APPROVED AS TO FORM:

By: _____

CHRISTIAN B. NIELSEN
Chief Deputy City Attorney

Attorney for Defendants